

**Moultonborough Zoning Board of Adjustment  
P.O. Box 139  
Moultonborough, NH 03254**

**Regular Meeting**

**August 3, 2016**

**Minutes**

Present:       Members:       Bob Stephens, Ken Bickford, Bob Zewski, Robert St. Peter  
                  Alternates:   Nick DeMeo, Paul Onthank  
Excused:       Member:       Russ Nolin  
                  Alternates:   Richard Jenny, Jerry Hopkins  
Staff Present:   Administrative Assistant, Bonnie Whitney

**I.       Call to Order**

Chairman Stephens called the meeting to order at 7:00 PM and led the Pledge of Allegiance. He then introduced the members of the board to the public. He appointed Nick DeMeo to sit on the board with full voting privileges for public hearings #1 and #3, and Paul Onthank to sit on the board with full voting privileges for public hearing #2, both in place of missing member Russ Nolin.

**II.       Pledge of Allegiance**

**III.      Approval of Minutes**

**Motion:**       Mr. Zewski moved to approve the Zoning Board of Adjustment Minutes of July 6, 2016, as corrected, seconded by Mr. Bickford, carried unanimously.

**IV.      Hearings**

1.       Leaman & Abigail Antone (192-14) (528 Moultonboro Neck Road)  
          Variance from Article III.B. 3

Chairman Stephens opened with a brief explanation on the background on the application. It is a request to replace a garage which had fallen down. During the applicant's process the applicant and agent were unaware of the process for such. We did not have a Town Planner and Bonnie was out on medical leave. The Chair feels the Code Enforcement Officer (CEO) was unaware at the time that the garage was in total disrepair from falling down. Under the current zoning ordinance, if the building has come down by natural causes, they are allowed to rebuild that in kind, in the same footprint and the same location. The building no longer exists, so there is nothing for the ZBA to have witnessed the absolute condition that is cited. Had the CEO be able to look at the garage and known that it was a dilapidated building and gone out, he would have been able to issue a building permit on the basis of the condition based on the way the MZO is written.

Mr. Bickford questioned how the Chair knew the building was falling down. He replied only by testimony. Ms. Whitney had indicated that she was aware of it. The applicant's agent indicated that he has evidence that the building was down. Mike McLaughlin, agent for the Antone's provided the Board with photos of the garage in its dilapidated prior to it recently coming down. Members reviewed the photos.

Chairman Stephens questioned how the Board wished to proceed.

For clarification, members questioned technically they would not have to hear this, assuming that the applicant was aware prior to the removal of the building? Chairman Stephens stated yes, that was his position. Noting if they could have gone to the site and looked at the building and saw that it was days or weeks away from total collapse, they would have been entitled to a building permit to rebuild it in the same location, of like kind, which is what the request is as presented for the variance tonight.

Mr. Bickford asked if they knew when the building came down. Mr. McLaughlin replied about the time they came in to get the building permit. Mr. Bickford asked if it was within the past year. Mr. McLaughlin stated with the past couple of weeks.

Chairman Stephens again reminded the Board to make a determination as to whether or not this requires a variance or should it be construed as a rebuild and not losing grandfathered rights. The ordinance does allow for them to expand in the non-conformed area up to twenty percent. Chairman Stephens commented that was a good point, as it is a year for reconstruction.

Mr. St. Peter asked if it was being relocated exactly where the other building was, and same size. Mr. McLaughlin stated yes, and the same size.

Members were in agreement that they were comfortable in not hearing the variance request.

Voting members were Bob S., Ken, Bob Z., Rob and Nick.

**Motion:** Mr. Bickford moved that the Board not hear the application for variance for Leaman & Abigail Antone, for a parcel located at 528 Moultonboro Neck Road (Tax Map 192, Lot 14) and that the building be considered grandfathered, even though the structure was recently removed with the past year due to the fact that the building was in a collapsed condition, seconded by Mr. St. Peter.

The Chair noted that the applicant had paid all of the necessary fees associated with the submission of the application. He asked in light of the fact that the Board did not conduct the Public Hearing, would the members be in favor of considering refunding the application fee. Members briefly discussed this, asking if this had been done in the past, and if this would be setting a precedent. The Chair felt that this process may have been different had there be a Planner or staff available in July. It was the decision of the Board to refund the application fee only, and not any funds that have been expensed by the Town, which included the advertising fee and abutter notification fees.

Mr. Bickford amended his motion to include that the \$100 application fee be refunded to the applicant. Mr. St. Peter seconded the amendment, motion passed unanimously.

2. Scott & Lisa Crabtree (189-17) (32 Arrow Trail)  
Variance from Article III.B.1 & B.3

Chairman Stephens stated that this is a request for a variance. The applicant is proposing to construct a garage within the side & front property line setbacks (proposed side setback 13, ft. where 20 ft. is required; proposed street setback 22 ft. where 25 ft. is required).

Dan Ellis from Ames Associates was present this evening representing the applicants Scott & Lisa Crabtree, who were also present for the hearing. Mr. Ellis briefly described the location and existing conditions of the property, noting there are six waterfront lots that were created in 1955 and are prime examples of a reasoning for zoning. The lots average 0.25 of an acre with 60 +/- feet of shore frontage and 55 +/- feet of road frontage. The subject lot is the last lot at the dead end of Arrow Trail. The proposal is for the construction of a 14' x 24' garage within the side & front property line setbacks

(proposed side setback 13, ft. where 20 ft. is required; proposed street setback 22 ft. where 25 ft. is required). The project will require a NH DES shore land permit. Mr. Ellis briefly addressed the criteria for the granting of a variance and answered any questions from the board.

Chairman Stephens questioned if the propose garage will have a concrete foundation and/or slab? Mr. Ellis replied that was still undecided. There are a couple of different options for the foundation. It could be potentially wood framed on sweepers and some form of crushed stone base or it may be a slab.

Mr. Zewski noted that there was an existing small storage shed on the site, and questioned if that is the location of the proposed garage. Mr. Ellis stated yes, the small storage shed will be removed and replaced with the proposed garage.

Chairman Stephens opened the hearing for public input at this time.

Chairman Stephens asked if there were any additional questions from the board at this time, it was noted there were none. The board went into deliberative session to discuss each of the criteria for granting the variance at 7:25 PM and came out of deliberative session at 7:29 PM.

There was no further input from the Board or public. The voting members were Bob S., Ken, Bob Z., Rob and Paul.

**Motion:** Mr. Zewski moved to grant the request for a variance from Article III. B.1 and B.3 for Scott & Lisa Crabtree, Tax Map 189, Lot 17 subject to the following condition: 1) The approved shore land permit be in line with this approval and be submitted with the building permit application ... and to close the Public Hearing. The Board moved to direct Staff to draft a formal Notice of Decision for review and approval for signing at the next meeting, seconded by Mr. Onthank, motion passed, five (5) in favor (Stephens, Bickford, Zewski, St. Peter, Onthank) and none (0) opposed.

Chairman Stephens noted the 30 day right to appeal in accordance with NH RSA 677:2 would begin tomorrow.

3. Gallo Retirement Realty Trust; Kevin P. Gallo, Trustee (128-25) (10 Olympia Street)  
Variance from Article III.B. 1

Chairman Stephens stated that this is a request for a variance from Article III.B.2 to allow for the construction of a detached two-car garage within the side property line setback (proposed side setback 5 ft. where 20 ft. is required). The Chair noted that there was not any dimensional information on the rear setback, as to whether that will be 20 ft. away from the rear property line.

Leon Barton was present this evening representing the Gallo Retirement Realty Trust. Mr. Barton stated there was 35-40 feet to the rear property line. Mr. Barton stated that the existing residence is located in the center of the lot, and there is no other place to go. The owners wish to construct a garage for their toys as not to clutter the neighborhood. The proposal is for the construction of a 28' x 32', one-story garage which will be located 25' from the road. Mr. Barton noted the existing improvements on the lot. He answered any questions from the Board.

Members requested clarification of the sketch provided with the application as they were having difficulties orientating the lot lines in respect with the dwelling and the lot. Mr. Barton explained the orientation of the existing dwelling and the proposed garage.

Mr. Bickford questioned why the garage couldn't be placed to the left of the dwelling, when pulling into driveway. Mr. Barton replied that they're trying not to put another driveway in, they're

trying to keep the 25' buffer between the road and the driveway which blocks the garage from the neighbors viewing it. Mr. Bickford noted that there are other structures on the lot that are not shown. Mr. Barton stated that there is a shed, which is not shown on the town's tax map.

Mr. St. Peter questioned if there was another location on the lot that a garage could be built that would not require a variance. Mr. Barton stated that it would not fit, and a variance would be required for either side. Mr. St. Peter questioned what the distance was from the house to the property line on the other side? Mr. Barton stated he did not have that information. Mr. Bickford questioned if the sketch was drawn to scale? Mr. Barton stated it was as close as he could get it working off the town's tax map. Mr. Barton noted there is a ditch with runoff to the left of the home. Mr. Bickford noted that it is not the purview of the Board to determine where the garage should or could be, but to act on the application presented. The Chair agreed, stating that members need to determine whether or not it meets the criteria and the hardship component of it. Mr. Bickford commented that he was having difficulty understanding what the hardship would be.

Members had questions regarding the trench Mr. Barton referred to, the dimensions of the location on the opposite side of the dwelling as well as the location of the proposed garage. Mr. St. Peter commented that he would like accurate dimensions prior to making his decision. Other members felt that they did not have enough information to deal with the hardship criteria and would like the applicant to demonstrate why the lot is unique.

Chairman Stephens opened the hearing for public input at this time. Rich Kumpf, 92 Randall Road was present representing the abutters located at 7 Joanna Street (Lot 26). Mr. Kumpf explained that he was the previous owner of the lot. Mr. Kumpf recently (July 14, 2016) sold his property to Suzanne Melo and Mike Diraimo. Mr. Kumpf noted the concerns of the property owners as outlined in their letter to the Board dated July 28<sup>th</sup>, 2016. They believe that there are several options for the project which include a smaller garage, boundary line adjustment, locate garage closer to house, or locate it to the other side of the house. Mr. Kumpf felt that there are many other alternatives.

Chairman Stephens noted for the record that the Board is dealing with an application that is before them, and it is not the Board's responsibility to determine if a smaller structure can or cannot be there. This is what is being asked for. The Board has clearly indicated a lack of information is not going to serve their ability to effectively look at this in terms of the criteria, and was hearing that members would like more information. Members felt in fairness to all parties they would like more information. The Chair asked the proposal for the Board. It was noted that the applicant has the right to go forward with the hearing this evening, but given the comments of the Board and the difficulty of some of the members of the Board finding a hardship at this point without further information, clearer dimensions, they'd be running a risk. Mr. Barton stated that he was merely representing the home owner, wasn't certain in what he was doing and if there is more information needed. Mr. Barton was given the options he had, one is to withdraw and come back when they have more information, or request a continuance, to a date certain, allowing time for the applicant and/or agent to review their project taking into concerns heard this evening. If they feel there isn't an alternative option, then they should provide accurate, surveyed dimensions, address the concerns regarding wetland issues and drainage. At that point the applicant may discover it could be relocated and no variance would be required. If that were the case, they could then withdraw the application.

Voting members were Bob S., Ken, Bob Z., Rob and Nick.

**Motion:** Mr. Bickford moved table the Public Hearing for Gallo Retirement Realty Trust; Kevin P. Gallo, Trustee, 10 Olympia Street, (128-25) to September 7, 2016, in order for the applicant to provide additional information. Seconded by Mr. DeMeo, carried unanimously.

**V. Correspondence.** None.

**VI. Unfinished Business** None.

**VII. Adjournment**

**Motion:** Mr. Bickford made the motion to adjourn at 8:08 PM, seconded by Mr. St. Peter, carried unanimously.

Respectfully Submitted,  
Bonnie L. Whitney  
Administrative Assistant

**NOTICE:** These **DRAFT** Minutes have not been formally approved by the Zoning Board of Adjustment. Please contact the Office of Development Services after the next regularly scheduled meeting of the Moultonborough Zoning Board of Adjustment to be held on the 1st and 3rd Wednesday of each month, to learn if any corrections, additions or deletions were made.